IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21711 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNIL KUMAR MAHESHWARI - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
MR MUKUL SINHA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MS MEGHA JANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 22/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India and made the following prayers in para 5 :

> "(a) Setting aside the decision of the Learned Central Administrative Tribunal dated 30.8.2005 at Annexure B.
>
> (b) Allowing the Original Application No.174 of 2004 and granting the prayers made in Paragraph 8 of the O.A.
>
> (c) During the pendency and final disposal of the present petition, this Hon'ble Court be pleased to restrain the respondents from recovering in any manner whatsoever the amount of Rs.2,27,223/- as ordered by the impugned order dated 4.2.2004."

Copy of the Original Application No.174 of 2004 filed before the Central Administrative Tribunal (for short "the Tribunal") is also annexed to this petition at page 68 (Annexure-C collectively) wherein the following prayers have been made :

> "(i) This Hon'ble Tribunal may be pleased to quash and set aside the orders contained in the Railway Board's letter dated 8/7/1999 at Annexure A/1.
>
> (ii) This Hon'ble Tribunal may be pleased to quash and set aside the directions contained in the RCS, Vadodara letter dated 4/2/2004, at Annexure A above, asking the applicant to deposit an amount of Rs.2,27,223/-.

(iii) This Hon'ble Tribunal may be pleased to direct the respondents to immediately transfer the Provident Fund balance, Gratuity and pension liability / contribution of the applicant to IIM, Ahmedabad with compound interest @12% p.a. on all the amounts due till the same are received by the IIM, Ahmedabad.

(iv) This Hon'ble Court may be pleased to direct the respondents to arrange payment of his dues under the Group Insurance Scheme and the amount payable as Leave Encashment with compound interest @12% p.a.

(v) This Hon'ble Court may be pleased to grant cost of this application to the applicant."

However, in para 1 of the application at page 68 the applicant has stated that he has challenged the orders dated 4.2.2004 passed by the respondent No.2 as well as letters dated 10.4.2003 and 8.7.1999 issued by the respondent No.1. It may be stated that letter dated 10.4.2003 is not annexed either to the main Original Application or to this petition. Be that as it may.

The Deputy Secretary (E), Railway Board asked the Principal, R.S.C., Vadodara to adjust all outstanding dues recoverable from the petitioner against the settlement dues (page 88 of this petition). The said order was communicated by Professor – RM / Principal of Railway Staff College, Vadodara to the petitioner by letter dated 8.10.1999 whereby the petitioner was asked to remit the outstanding amount of House Building Advance taken

from Railways by him to R.S.C. Neither the petitioner had preferred to challenge that order before the Tribunal within the period of limitation nor he had chosen to comply with the impugned order dated 8.7.1999 communicated to him by an order dated 8.10.1999. Instead he preferred to make a representation and continued to make representation after representation. Some of the representations remained un-replied. However, his last representation dated 9.9.2003 (page 113) and reminder dated 12.12.2003 came to be rejected by an order dated 4.2.2004. This impugned order dated 4.2.2004 (page 84) and the order dated 8.7.1999 came to be challenged by the petitioner by way of Original Application No.174 of 2004 before learned Tribunal which was dismissed by the learned Tribunal by its impugned judgment and order dated 30.8.2005 (Annexure-B to this petition) on the ground of limitation as well as on merits which is challenged in this petition.

Learned counsel Mr.Sinha for the petitioner vehemently submitted that the learned Tribunal erred in rejecting his application on the ground of limitation. He also tried to assail the impugned order passed by the learned Tribunal rejecting his application on merits. Having heard Mr.Sinha for petitioner for a considerable time on the ground of delay we were not convinced, therefore, we did not permit Mr.Sinha to assail the impugned judgment and order of the learned Tribunal on merits as the

impugned judgment and order passed by the learned Tribunal was required to be confirmed on the ground of limitation.

On the point of limitation, Mr.Sinha vehemently submitted that the petitioner – original applicant had challenged two orders in his application first original order dated 8.7.1999 (page 88) and final order on his representation dated 4.2.2004 (page 84). He submitted that the applicant had filed application in April, 2004 i.e. within 2 months from the date of last and final order dated 4.2.2004, therefore, the application was within period of limitation. To make his submission good, Mr.Sinha has taken through Sections 20 and 21 of the Administrative Tribunals Act, 1985 (for short "the Act"). He has also placed reliance on 3 judgments of the Tribunal viz. (1) *K.C.Subramanian and Ors. v. Chief General Manager, Telecommunications, Madras and Ors. (1991)16 Administrative Tribunal Cases 28*; (2) *Adithavaraneswaran vs. Union of India reported in (1989)11 Administrative Tribunal Cases 743*; and (3) *S.Raghuraman v. Union of India and Ors reported in (1989)11 Administrative Tribunals Cases 495*, wherein the Tribunal has held that after rejection of representation if the application is filed, then the same can be entertained if it was within the period of limitation. First two judgments in cases of K.C.Subramanian and Adithavaraneswaran (supra), decided by the learned Tribunal, when the controversy was regarding seniority. The last judgment of

S.Raghuraman (supra) was on the point of promotion wherein the learned Tribunal held that limitation will run from the rejection of the second representation.

From the impugned judgment and order passed by the learned Tribunal, it is clear that the learned Tribunal while rejecting the application of the petitioner – original applicant on the ground of limitation relied on the judgment of the Hon'ble Supreme Court in case of *S.S.Rathore v. State of Madhya Pradesh AIR 1990 SC 10*. It may also be stated that all the aforesaid 3 judgments are of Tribunal. The third and last judgment in case of S.Raghuraman (supra) was on the point of promotion where the learned Tribunal held that even after rejection of second representation if the application is filed then it can be entertained provided it is within the period of limitation. However, in case of ***State of Haryana vs. Ajay Walia (Ms.) reported in (1997)6 SCC 255*** the Hon'ble Supreme Court has held that repeated representations would not furnish a cause of action.

Coming to the facts of this case, it is clear that initially the impugned order was passed on 8.7.1999 (page 88) which was communicated to the petitioner by letter dated 8.10.1999. Instead of challenging the said order immediately before the Tribunal within the period of limitation, the petitioner preferred to make representation after representation. No doubt, it is true that in

between by letter dated 17.1.2002 (page 112) the petitioner was informed that his representation was under consideration. However, it remained undecided, therefore, another representation dated 9.9.2003 made followed by reminder dated 12.12.2003 and the same came to be decided on 4.2.2004 (page 84). However, in our considered opinion, it would not save the period of limitation. It is unfortunate that though before the learned Tribunal a specific contention was raised at the earlier point of time in reply affidavit by the Railways that without filing any application for condonation of delay the applicant had filed Original Application. The applicant did not file any application for condonation of delay. The request made for the first time before this court, when this court was not inclined to interfere with the impugned judgment and order passed by the learned Tribunal on the ground of limitation, that the petitioner may be allowed to file application for condonation of delay before the learned Tribunal. But it is too late, therefore, such a request at this juncture cannot be granted.

Though this petition is filed both under Articles 226 and 227 of the Constitution of India, strictly speaking it is a petition under Article 227 of the Constitution of India, the scope of which is very narrow and limited as held in case of ***Mohd. Yunus vs. Mohd. Mustaqim reported in AIR 1984 SC 38***. In case of Mohd. Yunus (supra) the Hon'ble Supreme Court held that;

> “A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited `to seeing that an inferior Court or Tribunal functions within the limits of its authority' and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory powers under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision”.

Even if the learned Tribunal had committed error of law, then also, this court cannot interfere unless jurisdictional error is pointed out, which is not there in the instant case.

In view of the above discussion, without going into the merits of the case, this petition is dismissed on the grounds stated herein above. Rule discharged. No order as to costs. Interim relief granted earlier stands vacated forthwith.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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